IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL REVISION APPLICATION No 221 of 2003

For Approval and Signature:

HON'BLE MR.JUSTICE C.K.BUCH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

RAJKAMAL FOODS PVT.LTD.

Versus

STATE OF GUJARAT

Appearance:

1. Criminal Revision Application No. 221 of 2003

MRS VIMLA NAINWAL FOR MR KR RAVAL for Petitioner No. 1-2

MS NANDINI JOSHI, APP for Respondent No. 1

RULE SERVED BY DS for Respondent No. 2

CORAM : HON'BLE MR.JUSTICE C.K.BUCH

Date of decision: 24/03/2004

ORAL JUDGEMENT

1. This Revision Application is filed for quashing and setting aside the impugned order dated 24.4.2003

passed below application exh.34 by ld. Judicial Magistrate (First Class), Rajkot in Criminal Case No.3455/1999 whereby the ld. JMFC dismissed the said application praying discharge by the petitioners accused.

2. The petitioners are original accused nos. 5 & 9 of Criminal Complaint filed by Food Inspector, Food & Drugs Department, Rajkot being Criminal Case No. 3455/1999 in the Court of ld. Judicial Magistrate (F.C.), Rajkot. It is contended that the petitioners are manufacturer of a food article taken by way of sample which was ultimately found adulterated.

3. The petitioners are doing business of manufacturing Gutkha Pouch in the name of Tambool Gutkha and they are granted licence by licensing authority namely Assistant Commissioner, Food & Drugs Administration (Mehsana Circle) on 17.6.1996. By virtue of provisions of Sec.17 of the Prevention of Food Adulteration Act,1954 (hereinafter referred to as PFA Act), accused no.9 Rajeshbhai Parsottambhai Patel was appointed as Nominee by the Company vide its resolution dated 28.2.1996 and nomination has been forwarded to the licensing authority in accordance with rules and the same has been accepted.

4. To appreciate the say of the present petitioners who have challenged the impugned order rejecting the application for discharge, it would be proper to narrate basic facts in brief. As per the case of prosecution, competent Food Inspector had visited place of vendor Shri Bharatbhai Karsandas Popat at Rajkot and took sample in the pack condition of "Tambool Gutkha" on 3.7.1997 at 12.50 noon. One of the sample was sent to Public Analyst for analysis on 10.7.1997. Public Analyst found presence of Magnesium Carbonate to the extent of 3.844% in the sample of Gutkha and, therefore, he opined that Gutkha is adulterated food article within the meaning of PFA Act. It is contended by the complainant that the accused persons were intimated about finding recorded by the Public Analyst and filing of the prosecution. In exercise of the privilege conferred on the accused persons, the petitioners requested to send 2nd sample to Central Food Laboratory (CFL for short) for analysis and undisputedly it was sent for analysis to CFL. Report of Public Analyst is produced on record by the petitioners which is at page-9 Annex.B. Details of sample are found at page-10 and report by the Director, CFL, Calcutta is at Annex.G page-11.

5. It is argued by ld. counsel Mrs. Vimla Nainwal

for ld. counsel Mr. K.R. Raval for the petitioners that as per settled legal proposition, the report of CFL supersedes earlier report of Public Analyst and for no purpose, it can be read or considered. It is argued that this contingency was pointed out to ld. JMFC and it was submitted that the sanction to prosecute the present petitioners and all the accused has been granted by the competent authority on the strength of report of Public Analyst wherein presence of Magnesium was found. When report of CFL clearly indicates that in examination test for Carbonate and Magnesium, no such ingredients were found and, therefore, it is mentioned in both the relevant columns that the test is found "negative". When there was no magnesium or carbonate in Gutkha tested by CFL, the prosecution launched on the strength of report of Public Analyst is not sustainable and this aspect would go to the validity of the sanction granted by the authority. It is also submitted by Mrs. Nainwal that ld. JMFC has failed in appreciating the aspect that report of CFL does not clarify as to how and why sample has been declared as adulterated.

6. Ld. APP Ms. Nandini Joshi has taken me through explanation given by the authority which is in para-3 of the order. Ld. JMFC seems to have accepted the explanation of CFL, but plain reading of so-called explanation is neither found logical nor legal because undisputedly, it was mentioned on the sample pouch of "Tambool Gutkha" that it contains tobacco and statutory warning "chewing of tobacco is injurious to health" was already there printed on the pouch. This aspect is referred in all relevant documents including the description of the sample sent to both the testing laboratories. Mismatching of description of sample in CFL Report with first report and/or with panchanama or in complaint, is also relevant, which has been found in the present case.

7. It is argued further by ld. APP Ms. Joshi that when CFL has opined that sample tested by it was adulterated, then it would not be either legal or proper to discharge the accused at any stage of the trial and the proceedings should not be dropped in such a case.

8. I have gone through the impugned order and R & P of the case. There is force in the submissions of ld. counsel Mrs. Nainwal for the petitioners that especially when prosecution is not found sustainable in the eyes of law or on any other technical or legal ground, then it would not be justified to drag the petitioners to face the trial. I am in agreement with the contentions raised by the petitioners in the application for discharge as

well as submissions advanced by ld. counsel Mrs. Nainwal. There is force in the argument of Mrs. Nainwal for the petitioners that when report of CFL has superseded the finding recorded by Public Analyst, then it would not be legal or proper for the Court to conclude prima facie that the accused can be convicted for keeping or selling adulterated food article with magnesium or carbonate as referred in the sanction granted to prosecute the accused.

9. Mrs. Nainwal has placed reliance on the decision of this Court in the case of Suresh H.Rajput v/s Jayantilal Bhikhabhai Shah & Ors., 42(3) GLR 2683, wherein it has been observed that when Public Analyst Report & Central Food Laboratory Reports holding contradictory to each other regarding presence of adulterated substance, report of Central Food Laboratory would necessarily supersede the report of Public Analyst as per sub-sec.(ii) of Sec.13 of PFA Act.

10. In view of the facts and circumstances of the case as above and settled legal position, the ld. JMFC has committed an error in rejecting the application exh.34 praying discharge. Ld. JMFC has not considered legal as well as factual aspects of the matter in correct perspective. When there is no legal evidence or when there is no scope for prosecution to bring home the charge on account of any technical or legal infirmity, petitioners should not have been asked to face trial. Hence, this Cri. Rev. Application requires to be allowed.

11. In the result, Cri. Rev. Application is allowed. Impugned order dated 24.4.2003 passed by ld. JMFC, Rajkot below application exh.34 in Cri. Case No.3455/1999 is hereby quashed and set aside. Application exh.34 for discharge is hereby allowed and the petitioners accused are hereby discharged from the offences with which they are charged. Petitioner No.2 (orig. accused no.9) is on bail, his bail bonds stand cancelled. Rule is made absolute. Direct Service is permitted.

[C.K. BUCH, J]

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